

this chapter, in any way affect the status, as ordinary and necessary expenses under section 162(a) of title 26, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(f) Section 78t(a) of this title not to apply

The provisions of subsection (a) of section 78t of this title shall not apply to any liability under or in connection with this chapter.

(g) SEC study of unsafe or unsound practices

Not later than twelve months after December 30, 1970, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

(Pub. L. 91-598, § 15, formerly § 11, Dec. 30, 1970, 84 Stat. 1655; renumbered § 15 and amended Pub. L. 95-283, §§ 9, 14, May 21, 1978, 92 Stat. 260, 270; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (f), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (b). Pub. L. 95-283, § 14(c), redesignated subsec. (c) as (b). Former subsec. (b), relating to application of securities investor protection provisions to foreign members, was struck out.

Subsec. (c). Pub. L. 95-283, § 14(a), (c), redesignated subsec. (d) as (c) and inserted ", officers, or employees" after "Directors" in heading and text. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 95-283, § 14(b), (c), redesignated subsec. (e) as (d), inserted provisions authorizing SIPC to prescribe necessary and proper minimal requirements for providing public notice of membership by a member of SIPC in SIPC, and struck out provisions authorizing rules by SIPC to implement advertising requirements. Former subsec. (d) redesignated (c).

Subsecs. (e) to (h). Pub. L. 95-283, § 14(c), redesignated subsecs. (e) to (h) as (d) to (g), respectively.

§ 78III. Definitions

For purposes of this chapter, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) Commission

The term "Commission" means the Securities and Exchange Commission.

(2) Customer

(A) In general

The term "customer" of a debtor means any person (including any person with whom the debtor deals as principal or agent) who

has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

(B) Included persons

The term "customer" includes—

(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

(C) Excluded persons

The term "customer" does not include any person, to the extent that—

(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(3) Customer name securities

The term "customer name securities" means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(4) Customer property

The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term "customer property" includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 78o(c)(3) of this title and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 78fff(d) of this title;

(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and

(E) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(5) Debtor

The term "debtor" means a member of SIPC with respect to whom an application for a protective decree has been filed under section 78eee(a)(3) of this title or a direct payment procedure has been instituted under section 78fff-4(b) of this title.

(6) Examining authority

The term "examining authority" means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 78iii(c) of this title.

(7) Filing date

The term "filing date" means the date on which an application for a protective decree is filed under section 78eee(a)(3) of this title, except that—

(A) if a petition under title 11 concerning the debtor was filed before such date, the term "filing date" means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term "filing date" means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 78fff-4(f) of this title, the term "filing date" means the date on which notice of such direct payment procedure was published under section 78fff-4(b) of this title.

(8) Foreign subsidiary

The term "foreign subsidiary" means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(9) Gross revenues from the securities business

The term "gross revenues from the securities business" means the sum of (but without duplication)—

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups with respect to purchases or sales of securities as principal;

(B) charges for executing or clearing transactions in securities for other brokers and dealers;

(C) the net realized gain, if any, from principal transactions in securities in trading accounts;

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;

(E) interest earned on customers' securities accounts;

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;

(H) income from service charges or other surcharges with respect to securities;

(I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;

(J) fees in connection with put, call, and other option transactions in securities;

(K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and

(L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived

by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(10) Liquidation proceeding

The term “liquidation proceeding” means any proceeding for the liquidation of a debtor under this chapter in which a trustee has been appointed under section 78eee(b)(3) of this title.

(11) Net equity

The term “net equity” means the dollar amount of the account or accounts of a customer, to be determined by—

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 78fff-2(a) of this title).

A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(12) Persons registered as brokers or dealers

The term “persons registered as brokers or dealers” includes any person who is a member of a national securities exchange other than a government securities broker or government securities dealer registered under section 78o-5(a)(1)(A) of this title.

(13) Protective decree

The term “protective decree” means a decree, issued by a court upon application of SIPC under section 78eee(a)(3) of this title, that the customers of a member of SIPC are in need of the protection provided under this chapter.

(14) Security

The term “Security” means any note, stock, treasury stock, bond, debenture, evidence of

indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, or any security future as that term is defined in section 78c(a)(55)(A) of this title, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.]), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term “security” does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

(Pub. L. 91-598, § 16, formerly § 12, Dec. 30, 1970, 84 Stat. 1656; renumbered § 16 and amended Pub. L. 95-283, §§ 9, 15, May 21, 1978, 92 Stat. 260, 271; Pub. L. 95-598, title III, § 308(o), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 97-303, § 7, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100-181, title VIII, § 802, Dec. 4, 1987, 101 Stat. 1265; Pub. L. 106-554, § 1(a)(5) [title II, § 203(d)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-424; Pub. L. 111-203, title IX, § 983(b), July 21, 2010, 124 Stat. 1931.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1), and in pars. (10) and (13), was in the original “this Act”, meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in provision preceding par. (1), is act July 1, 1898, ch. 541, 30 Stat. 544, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

The Securities Act of 1933, referred to in par. (14), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2010—Par. (2). Pub. L. 111-203, § 983(b)(1), added par. (2) and struck out former par. (2) which defined “customer”.

Par. (4)(D), (E). Pub. L. 111-203, § 983(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Par. (9). Pub. L. 111-203, § 983(b)(3), in concluding provisions, inserted “includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term” before “does not include”.

Par. (11). Pub. L. 111-203, §983(b)(4)(B), in concluding provisions, substituted “A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining” for “In determining”.

Par. (11)(A). Pub. L. 111-203, §983(b)(4)(A), substituted “by sale or purchase on the filing date—” for “by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus” and added cls. (i) and (ii).

2000—Par. (14). Pub. L. 106-554 inserted “or any security future as that term is defined in section 78c(a)(55)(A) of this title,” after “certificate of deposit for a security.”.

1987—Par. (12). Pub. L. 100-181 inserted “other than a government securities broker or government securities dealer registered under section 78o-5(a)(1)(A) of this title”.

1982—Par. (14). Pub. L. 97-303 inserted “any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,” after “the Securities Act of 1933 [15 U.S.C.A. §77a et seq.],” and substituted “Except as specifically provided above, the term ‘security’ does not include” for “The term ‘security’ does not include”.

1978—Par. (1). Pub. L. 95-598, §308(o)(1), (3), struck out par. (1) definition of “Bankruptcy Act” and redesignated par. (2) as (1).

Pars. (2) to (6). Pub. L. 95-598, §309(o)(3), redesignated pars. (3) to (7) as (2) to (6), respectively. Former par. (2) redesignated (1).

Par. (7). Pub. L. 95-598, §308(o)(2), (3), redesignated par. (8) as (7) and substituted in subpar. (A) “if a petition under title 11 concerning the debtor was filed before such date” for “if a petition was filed before such date by or against the debtor under the Bankruptcy Act, or under chapter X or XI of such Act, as now in effect or as amended from time to time”. Former par. (7) redesignated (6).

Pars. (8) to (15). Pub. L. 95-598, §308(o)(3), redesignated pars. (9) to (15) as (8) to (14), respectively. Former par. (8) redesignated (7).

Pub. L. 95-283 in introductory text inserted requirement for applicability of terms to a liquidation proceeding involving the Bankruptcy Act, in par. (1) heading substituted “Bankruptcy Act” for “Self-regulatory organization”, and in text substituted provisions defining such terms, in par. (2) heading substituted “Commission” for “Financial responsibility rules”, and in text substituted provisions defining such terms, in par. (3) heading substituted “Customer” for “Examining authority”, and in text substituted provisions defining such terms, and added pars. (4) to (15).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of section by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

§§ 79 to 79z-6. Repealed. Pub. L. 109-58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974

Section 79, acts Aug. 26, 1935, ch. 687, title I, §36, formerly §33, 49 Stat. 838; renumbered §35, Pub. L. 102-486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905; renumbered §36, Pub. L. 104-104, title I, §103, Feb. 8, 1996, 110 Stat. 81, provided that this chapter could be cited as the “Public Utility Holding Company Act of 1935”.

Section 79a, act Aug. 26, 1935, ch. 687, title I, §1, 49 Stat. 803, related to necessity for control of holding companies and set forth policy of chapter.

Section 79b, act Aug. 26, 1935, ch. 687, title I, §2, 49 Stat. 804, defined terms.

Section 79c, act Aug. 26, 1935, ch. 687, title I, §3, 49 Stat. 810, related to exemption of holding companies from provisions of chapter.

Section 79d, act Aug. 26, 1935, ch. 687, title I, §4, 49 Stat. 812, related to transactions by unregistered holding companies.

Section 79e, act Aug. 26, 1935, ch. 687, title I, §5, 49 Stat. 812, related to registration of holding companies.

Section 79f, act Aug. 26, 1935, ch. 687, title I, §6, 49 Stat. 814, related to unlawful transactions by registered companies.

Section 79g, act Aug. 26, 1935, ch. 687, title I, §7, 49 Stat. 815, related to declarations by registered companies in respect to security transactions.

Section 79h, acts Aug. 26, 1935, ch. 687, title I, §8, 49 Stat. 817; Pub. L. 100-181, title IV, §401, Dec. 4, 1987, 101 Stat. 1259, related to acquisition of interest in electric and gas companies serving the same territory.

Section 79i, act Aug. 26, 1935, ch. 687, title I, §9, 49 Stat. 817, prohibited acquisition of securities and utility assets and other interests prior to approval.

Section 79j, act Aug. 26, 1935, ch. 687, title I, §10, 49 Stat. 818, related to approval of acquisition of securities and utility assets and other interests.

Section 79k, acts Aug. 26, 1935, ch. 687, title I, §11, 49 Stat. 820; Pub. L. 95-598, title III, §309, Nov. 6, 1978, 92 Stat. 2676, related to simplification of holding company systems.

Section 79l, act Aug. 26, 1935, ch. 687, title I, §12, 49 Stat. 823, related to intercompany and other transactions relating to registered companies.

Section 79m, act Aug. 26, 1935, ch. 687, title I, §13, 49 Stat. 825, related to service, sales, and construction contracts.

Section 79n, act Aug. 26, 1935, ch. 687, title I, §14, 49 Stat. 827, related to periodic and other reports.

Section 79o, act Aug. 26, 1935, ch. 687, title I, §15, 49 Stat. 828, related to keeping of accounts and records.

Section 79p, act Aug. 26, 1935, ch. 687, title I, §16, 49 Stat. 829, related to penalty for misleading statements and rights and remedies in addition to those under other laws.

Section 79q, act Aug. 26, 1935, ch. 687, title I, §17, 49 Stat. 830, related to officers and directors of registered holding companies.

Section 79r, acts Aug. 26, 1935, ch. 687, title I, §18, 49 Stat. 831; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 91-452, title II, §214, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title IV, §402, Dec. 4, 1987, 101 Stat. 1259, related to investigations, injunctions, and enforcement of law.

Section 79s, act Aug. 26, 1935, ch. 687, title I, §19, 49 Stat. 832, related to hearings before Securities and Exchange Commission.

Section 79t, act Aug. 26, 1935, ch. 687, title I, §20, 49 Stat. 833, related to rules, regulations, and orders to carry out provisions of chapter.

Section 79u, act Aug. 26, 1935, ch. 687, title I, §21, 49 Stat. 834, related to effect of chapter on other laws.

Section 79v, act Aug. 26, 1935, ch. 687, title I, §22, 49 Stat. 834, related to public disclosure of information filed with Securities and Exchange Commission.